

**381.9171 Transfer of special declarant rights. (Effective January 1, 2011)**

- (1) No special declarant right created or reserved under KRS 381.9101 to 381.9207 may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.
- (2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:
  - (a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by KRS 381.9101 to 381.9207. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;
  - (b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;
  - (c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by KRS 381.9101 to 381.9207 or by the declaration relating to the retained special declarant rights and arising after the transfer; and
  - (d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.
- (3) Unless otherwise provided in a mortgage, in case of foreclosure of a mortgage, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.
- (4) Upon foreclosure, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:
  - (a) The declarant ceases to have any special declarant rights; and
  - (b) The period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.
- (5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:
  - (a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by KRS 381.9101 to 381.9207 or by the declaration;

- (b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by KRS 381.9101 to 381.9207 or the declaration:
  - 1. On a declarant which relate to his or her exercise or nonexercise of special declarant rights; or
  - 2. On his or her transferor, other than:
    - a. Misrepresentations by any previous declarant;
    - b. Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;
    - c. Breach of any fiduciary obligation by any previous declarant or his or her appointees to the executive board; or
    - d. Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;
- (c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if he or she is not an affiliate of a declarant, shall not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant; and
- (d) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (3) of this section, may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor shall not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with KRS 381.9169(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under KRS 381.9169(4).
- (6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under KRS 381.9101 to 381.9207 or the declaration.

**Effective:** January 1, 2011

**History:** Created 2010 Ky. Acts ch. 97, sec. 36, effective January 1, 2011.